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7590 01/23/2008 SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC 2100 Pennsylvania Avenue, N.W. Washington, DC 20037-3202			EXAMINER RAO, ANAND SHASHIKANT	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HIROSHI YAMAGUCHI

Appeal 2007-0498
Application 09/656,131
Technology Center 2600

Decided: January 23, 2008

Before JAMES D. THOMAS, JOSEPH F. RUGGIERO, and
JOSEPH L. DIXON, *Administrative Patent Judges*.
DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1, 2, 4-7, and 11-21. We have jurisdiction under 35 U.S.C. § 6(b). An Oral Hearing was held on October 25, 2007.

We AFFIRM-IN-PART.

BACKGROUND

Appellant's invention relates to an image processing device, image processing method and recording medium. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. An image processing device comprising:
 - (a) a detecting device for detecting defect portions in an image represented by electronic information;
 - (b) a deciding device for selecting a correction method from among a plurality of types of correction methods for correcting a defect portion, or for deciding a range of application of each of at least two correction methods correcting a defect portion; and
 - (c) a correction device for correcting defect portions in the electronic information by applying the correction method selected by the deciding device, or for correcting defect portions in the electronic information by applying the at least two methods in the application ranges decided by the deciding device.

PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Edgar	5,266,805	Nov. 30, 1993
Hiramatsu	4,933,983	Jun. 12, 1990
Tung	3,758,193	Sep. 11, 1973

REJECTIONS

Claims 1-2, 4-7, 11, 13-15, 17-18, and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Edgar.

Claims 16 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Hiramatsu.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Edgar in view of Tung.

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim 1. Claims 8-10 and 22-24 are indicated as allowable.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellant regarding the above-noted rejection, we make reference to the Examiner's Answer (mailed Jun. 2, 2006) for the reasoning in support of the rejections, and to Appellant's Brief (filed Mar. 13, 2006) and Reply Brief (filed Aug. 1, 2006) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellant's Specification and claims, to the applied prior art references, and to the respective positions articulated by Appellant and the Examiner. As a consequence of our review, we make the determinations that follow.

Appellant argues independent claims 1, 13, and 18 together as a group and maintains that in Edgar there is no indication of a “deciding device” to select a correction method, nor is there any indication of a plurality of types of correction methods to be selected at any given time (App. Br. 14). At the Oral Hearing held on October 25, 2007, Appellant’s representative stated that only one of the two alternatives recited in independent claim 1 would be needed in the rejection under 35 U.S.C. § 102.

Appellant argues that "there is no indication that a deciding device selects the fill-in algorithm to be used." (App. Br. 14.) We cannot agree with Appellant. From our review of the teachings of Edgar, we find that column 12, lines 26-39, teaches two different processing methodologies based upon a comparison to a threshold infrared value. We find the use of the comparison function to be "a deciding device for selecting a correction method from among a plurality of correction methods for correcting a defect portion" as recited in element (b) of independent claim 1. In the language of independent claim 1, we find no express limitation that there are alternatives displayed or indicated to a user or otherwise presented for selection. Therefore, Appellants' argument is not persuasive.

We additionally find that the alternative processing of the red, green, and blue signals would have been two different correction methodologies, as required by the language of independent claim 1. We find the language of independent claim 1 to be rather broad, and we find that independent claim 1 does not limit the correction methodology, the detection methodology, or describe any calculations or corrections prior to or subsequent to the selected correction methodology to put the claim into a

specific context. We find that Edgar teaches the recited claim limitations. Therefore, we will sustain the rejection of independent claim 1 and independent claims 13 and 18 grouped therewith.

With respect to Appellant's arguments concerning deciding a range of application of each of at least two correction methods to correct the defect portion, as recited in independent claim 1 (App. Br. 15 and Reply Br. 5-7), we need not address these arguments since Appellant has admitted at Oral Hearing that only one of the two alternatives, as recited in independent claim 1 are required to be taught by Edgar. Since we found the first alternative is taught by Edgar, we need not address the second alternative.

Similarly, we will sustain the rejection of dependent claims 2, 4-7, 14, and 15 which have been grouped with independent claims 1 and 13.

With respect to independent claim 11, Appellant argues that Edgar does not disclose calculating a "brightness alteration" (App. Br. 16-18 and Reply Br. 7). The Examiner relies upon Edgar at columns 6, 7, and 9 to teach calculating a brightness alteration (Answer 5-6). From our review of the teachings of Edgar, we cannot agree with the Examiner's correlation of the teachings of Edgar to the recited limitations in independent claims 11, 17, and 20. Therefore, we cannot sustain the rejection of independent claims 11, 17, and 20 (and dependent claim 12 under 35 U.S.C. § 103 which we will treat separately later on in this opinion).

With respect to dependent claim 21, Appellant argues that Edgar does not disclose reducing the high frequency component of a spatial frequency of a defect portion and an area adjacent to the defect portion (Reply Br. 8). We agree with Appellant that Edgar does not teach a plurality of types of correction methods comprising a vignetting method as recited in dependent claim 21. Therefore, we will not sustain the rejection of dependent claim 21.

With respect to independent claims 16 and 19, Appellant argues that claims 16 and 19 recite elements similar to independent claim 8 and its dependent claims which have been deemed to be allowable by the Examiner (App. Br. 18). Appellant argues that therefore claims 16 and 19 should similarly be allowable. From our review of these claims, we find the scope of claims 16 and 19 to be broader than that of independent claim 8. Therefore, arguments thereto are not persuasive since the claims are not commensurate in scope. Appellant argues that independent claim 16 recites "calculating image feature amounts for defect portions in an image represented by electronic information along a plurality of different directions running from within the each defect portion" (App. Br. 19). The Examiner maintains that Hiramatsu teaches a sub-scanning processing which allows for directions perpendicular to the main line axis to allow for a two-dimensional scan for correcting defects at column 32, lines 5-10 (Ans. 12-13; App. Br. 19). We agree with the Examiner that Hiramatsu teaches the use of a scan plus a perpendicular sub-scan for long defects by substituting video data of a proceeding line by adjacent data in the correction of a sub-scan.

Therefore, since the data is substituted, that data would be used in the final correction and the image would be "based on" the image features in each direction which contains that substituted data. Therefore, we will sustain the rejection of independent claims 16 and 19.

35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of

obviousness. See *In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he Examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore, “‘there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

With respect to dependent claim 12, the Examiner relies upon the teachings of Tung in combination with Edgar. The Examiner maintains that Tung teaches using the ratio as part of the softening process and that the deficiencies noted by Appellant are taught or fairly suggested by Edgar. (Ans. 13-14). After consideration of the Examiner’s combination of teachings and the Examiner’s brief explanation thereof, we find the combined teachings to be lacking with respect to the “calculation device acquires a feature amount based on one of the type of image recording material and by calculating a ratio of a value . . .” as recited in dependent claim 12 (in addition to the noted deficiency in Edgar noted above). Since we do not find that the Examiner has set forth a *prima facie* case of obviousness, we cannot sustain the rejection of dependent claim 12.

CONCLUSION

To summarize, we have sustained the rejection of claims 1, 2, 4-7, and 13-16, 18, and 19 under 35 U.S.C. § 102; we have not sustained the rejection of claims 11, 17, 20, and 21 under 35 U.S.C. § 102; and we have not sustained the rejection of claim 12 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037-3202